

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0557P**  
**Sales and Use Tax**  
**Calendar Years 1999, 2000, and 2001**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a recreational center and leases the building, land, and equipment from its partnership. At audit, it was determined that the taxpayer failed to self assess and remit use tax on clearly taxable items such as office and building supplies, a safe, a computer, and other miscellaneous items and had no use tax accrual system in place. Taxpayer failed to collect and remit sales tax on the vending machine items.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it was not aware that parts and repair of its mechanical equipment were subject to sales or use tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer did not have a use tax accrual system in place, did not collect and remit sales tax on

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vending machine items, and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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